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**From:** Glenn, Trey [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C1F10FEC3149420597E6581C2586E25E-GLENN, ONIS]  
**Sent:** 2/13/2018 4:03:28 AM  
**To:** Jenkins, Brandi [Jenkins.Brandi@epa.gov]  
**CC:** Ashbee, Blake [ashbee.blake@epa.gov]  
**Subject:** Re: waters retained by the Corps re: 404 assumption in Florida

As far as we know is Florida in agreement with the waters to be retained by the Corps?

Sent from my iPhone

On Feb 12, 2018, at 9:36 PM, Jenkins, Brandi <Jenkins.Brandi@epa.gov> wrote:

What do you think?

Brandi

Sent from my iPhone

Begin forwarded message:

**From:** "Walker, Mary" <walker.mary@epa.gov>  
**Date:** February 12, 2018 at 5:57:47 PM EST  
**To:** "Jenkins, Brandi" <Jenkins.Brandi@epa.gov>  
**Subject:** FW: waters retained by the Corps re: 404 assumption in Florida

Brandi – See below for some info on waters. If you click on the link, this is a list of waters, but what is missing is what portion of these waters is assumable – and it is this that the Corps is working on now.

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**From:** McGill, Thomas  
**Sent:** Monday, February 12, 2018 5:38 PM  
**To:** Walker, Mary <walker.mary@epa.gov>  
**Cc:** Calli, Rosemary <Calli.Rosemary@epa.gov>; Mancusi-Ungaro, Philip <Mancusi-Ungaro.Philip@epa.gov>

**Subject:** waters retained by the Corps re: 404 assumption in Florida

Mary – Per our discussion, below is a summary about what we know about waters that would be retained by the Corps in Florida in regards to 404 assumption in Florida. Please let me know if you have any questions. Tom

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The 404 assumption package that we expect to be submitted by FDEP must include a Corps-FDEP MOA that describes that waters the Corps will retain under its jurisdiction. Staff with the Corps Jacksonville District have informed EPA staff that they are delineating waters to be retained using an approach consistent with the minority recommendations made by the Corps in the FACA Assumable Waters Subcommittee report issued in May 2017. Under this approach, the Corps would retain:

- <!--[if !supportLists]--><!--[endif]-->all section 10 waters as defined by the Rivers and Harbors Act;
- <!--[if !supportLists]--><!--[endif]-->all CWA (a)(1) Traditionally Navigable Waters; and

- <!--[if !supportLists]--><!--[endif]-->all adjacent wetlands to the above waters “regardless of furthest reach.”

Traditional Navigable Waters include all waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.”

The Jacksonville District has posted information on its website about Rivers and Harbors Act section 10 waters, including 23 pages of listed waters, with a caveat that these lists are not definitive or necessarily inclusive of all waters. (see

[http://www.saj.usace.army.mil/Portals/44/docs/regulatory/sourcebook/other\\_permitting\\_factors/Jacksonville%20District%20Section%2010%20Waters.pdf](http://www.saj.usace.army.mil/Portals/44/docs/regulatory/sourcebook/other_permitting_factors/Jacksonville%20District%20Section%2010%20Waters.pdf) and [http://www.saj.usace.army.mil/Portals/44/docs/regulatory/sourcebook/other\\_permitting\\_factors/20171005SupplementToJacksonvilleDistrictSection10Waters.pdf?ver=2017-10-05-123156-363](http://www.saj.usace.army.mil/Portals/44/docs/regulatory/sourcebook/other_permitting_factors/20171005SupplementToJacksonvilleDistrictSection10Waters.pdf?ver=2017-10-05-123156-363)).

EPA staff have recently learned that some Jacksonville Corps District staff do not believe they can successfully delineate the waters to be retained before March 2019.

- <!--[if !supportLists]--><!--[endif]-->EPA staff are now exploring options for how the FDEP-Corps MOA could potentially meet the requirements of describing the retained waters, short of providing a complete description of every water. As our regulations do not explicitly require the level of detail the Corps is pursuing in developing a GIS-based comprehensive identification of specific waters, an approach similar to that taken in New Jersey may suffice (i.e., The NJ-Corps MOA described a process/criteria for identifying waters to be retained).